

REPORT OF THE COMMITTEE ON BUDGET

Ann H. Kobayashi, Chair; Nestor R. Garcia, Vice-Chair
Todd K. Apo, Romy M. Cachola, Rod Tam, Members

Committee Meeting Held
January 12, 2005

Honorable Donovan M. Dela Cruz
Chair, City Council
City and County of Honolulu

Mr. Chair:

Your Committee on Budget, which considered Resolution 04-338 entitled:

"RESOLUTION URGING LESSORS AND LESSEES OF RESIDENTIAL
LEASEHOLD CONDOMINIUM APARTMENTS, COOPERATIVE HOUSING
UNITS AND PLANNED DEVELOPMENT UNITS TO NEGOTIATE VIABLE
ALTERNATIVE RENTAL HOUSING SOLUTIONS TO POTENTIAL
CIRCUMSTANCES UNDER LEASE AGREEMENTS,"

reports as follows:

The purpose of the Resolution is to urge lessors and lessees of residential leasehold condominium apartments, cooperative housing units and planned development units to negotiate viable alternative rental housing solutions to potential circumstances under lease agreements.

Your Committee heard testimony from the Kamehameha Schools, and from several small landowners in support of the resolution.

Your Committee amended the resolution to specify that: (1) the Administration will set up an office and/or position in the Office of Economic Development to help facilitate the lessors and lessees carry out the provisions of the resolution; and (2) the office would also lobby Congress for capital gains benefits to the lessors if they sell to lessees.

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON _____

COMMITTEE REPORT NO. 8

REPORT OF THE COMMITTEE ON BUDGET

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Your Committee on Budget is in accord with the intent and purpose of Resolution 04-338, as amended herein, and recommends its adoption in the form attached hereto as Resolution 04-338, CD1. (Ayes: Kobayashi, Apo, Cachola, Garcia, Tam - 5; Noes: None.)

Respectfully submitted,


Committee Chair

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON JAN 26 2005

COMMITTEE REPORT NO. 8



RESOLUTION

URGING LESSORS AND LESSEES OF RESIDENTIAL LEASEHOLD CONDOMINIUM APARTMENTS, COOPERATIVE HOUSING UNITS AND PLANNED DEVELOPMENT UNITS TO NEGOTIATE VIABLE ALTERNATIVE RENTAL HOUSING SOLUTIONS TO POTENTIAL CIRCUMSTANCES UNDER LEASE AGREEMENTS.

WHEREAS, Ordinance 91-95, adopted by a five-to-four decision in December 18, 1991 and codified as Revised Ordinances of Honolulu Chapter 38, instituted mandatory lease-to-fee conversion for residential condominium apartments, cooperative housing units, and planned development units; and

WHEREAS, the Honolulu City Council has found that Chapter 38 from inception has continued to be a divisive and controversial issue in the community and therefore resolved through City Council Resolution 03-69, CD1, FD1, adopted March 19, 2003, that further examination of Chapter 38 should be conducted with input and participation from representatives of lessors and lessees to determine, among other things, (1) the public purpose of Chapter 38, (2) whether the purported public purposes benefited the public as a whole, and (3) whether Chapter 38 achieved its purported public purposes; and

WHEREAS, City Council Resolution 03-69, CD1, FD1 resulted in the Honolulu City Council Leasehold Conversion Task Group, Facilitator's Report, by Thomas M. Mitrano, dated April 2, 2004 ("Facilitator's Report," numbered as Council Communications 113), which included the participation of representative members from lessors and lessees, and concluding, among other things, that:

"There have been significant changes in the relevant economic, social, and political environment since the enactment of Chapter 38 some 13 years ago. Similarly, the legal and practical impacts of Chapter 38 have been significant since 1991. The changes and impacts have been significant toward both sides of the issue. (Facilitator's Conclusions, Page 5)"; and

WHEREAS, the lessee group continues to advocate that the federal and state courts have found a public purpose in and upheld the constitutionality of Chapter 38 (See Lessees Supplemental Submission, March 31, 2004); and

WHEREAS, the lessor group continues to advocate that the federal and state courts have merely deferred under a "minimum scrutiny test" or exercised judicial deference to the City Council's finding of a public purpose in Chapter 38, that the City Council is not precluded from revisiting its own legislative findings under Chapter 38, and that upon closer examination of the facts and empirical data, the City Council



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should find and conclude that Chapter 38 from inception to the present never served a public purpose and simply permitted the taking of private property from one private party for the sole benefit of another private party through the application of the City's extraordinary eminent domain powers under Chapter 38 (See Lessor Team's Supplemental Report, April 2, 2004); and

WHEREAS, prior to the enactment of Chapter 38 in 1991, and to address the concerns of lessees who had pleaded ignorance of the leasehold system in Hawaii, the Hawaii State Legislature in 1989 enacted Chapter 516D, Residential Leasehold Condominiums and Cooperatives, Hawaii Revised Statutes ("Leasehold Disclosure Law"), which became effective July 1, 1990, mandating that for any sale of a condominium or a cooperative residential leasehold apartment, the seller shall provide the buyer for buyer's approval, acknowledgement and acceptance a standardized summary of certain salient terms and provisions of the lease agreement; and

WHEREAS, today, nearly 60% of owner-occupied leasehold condominium and cooperative apartment unit owners purchased their leasehold since the enactment of the Leasehold Disclosure Law in 1989 and thus were adequately informed of the advantages and disadvantages of leasehold or should have been aware and advised of the salient terms and provisions of the lease agreement; and

WHEREAS, the Council is currently considering Bill 53 (2004), which would repeal Chapter 38; and

WHEREAS, the Council finds that if Chapter 38 is repealed, a certain minority number of lessees may be on fixed incomes with limited assets and may be unable to bear (1) the full burden of increased lease rents or (2) the risk of losing their leasehold apartment unit as provided for in their lease upon expiration of their lease agreement ("Gap Group"); and

WHEREAS, the City Council believes that (a) it would be in the best interests of both the lessors and the Gap Group lessees to find creative and acceptable alternatives to address the (i) housing concerns of the Gap Group and (ii) the economic, social, cultural and spiritual concerns of the lessors in retaining ownership of their lands; and (b) any viable solution usually involves the compromise of both parties rather than just one of the parties; and

WHEREAS, the City Council recognizes that the value or economic interest of the lessor's reversionary interest in the project improvements and land under leasehold continually increases as the lease matures over time and that any solution to the



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housing concerns of the Gap Group must take into account the lessor's growing reversionary interest in the leasehold project; and

WHEREAS, although owners and lessees differ in their views on condominium leasehold conversion, there is a high level of consensus among lessor and lessee representatives of the Leasehold Conversion Task Group that the creation of federal, state, and local tax incentives for lessors can facilitate a "win-win" result in certain conversion situations, thereby enabling such conversions to take place through processes that do not rely solely on Chapter 38; and

WHEREAS, the City Council further finds that lessees should be given reasonable notice of the lessor's plans for the future of the leasehold condominium, cooperative or planned development project upon the expiration of the leases pertaining to the project in order for said lessees to have sufficient time to plan for alternative housing needs; and

WHEREAS, recognizing that condominium, cooperative and planned development lease expiration dates will not occur in most instances for another 20-30 years, the City Council also believes there is a strong likelihood that lessors of many residential leasehold condominium and cooperative projects will retain such projects, upon expiration of the leases pertaining thereto, in some form of residential use because such use will likely constitute the highest and best use under the then-existing zoning in the area; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that it recognizes that lessees who:

1. Acquired their leasehold condominium, cooperative, or planned development housing or apartment units prior to the effective date of the Leasehold Disclosure Law in 1990;
2. Have been qualified owner-occupants of their apartment units since the enactment of the Leasehold Disclosure Law;
3. Are on fixed incomes based on an agreed-upon percentage of the median income for the area;
4. Have limited assets not exceeding an agreed-upon multiple of the median income for the area; and



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5. Have paid down a substantial portion of their leasehold mortgages or have no existing mortgage on their leasehold,

constitute those lessees or the Gap Group who should receive initial consideration by lessors for alternative rental housing solutions that address concerns emanating from (a) the potential significant increase in rents upon rent renegotiations and (b) the potential risk of losing their homes upon expiration of their leases; and

BE IT FURTHER RESOLVED that the Council believes that any such alternative rental housing solution for qualified lessees within the Gap Group may possibly entail certain steps, such as (a) the early surrender of the lessee's leasehold interest, (b) a quantifiable credit by the lessor for the benefit of the lessee for the early surrender of the lessee's leasehold interest, (c) a restructured rental interest for a term of years in the apartment, unit for the benefit of the lessee who desires to occupy the apartment unit as the lessee's primary residence, and (d) the retention of some of the primary benefits of a leasehold interest, including:

1. A term of years established for the life of the lessee (or the joint lives of the lessees in the case of joint ownership between a husband and wife) or 20 years, whichever is less, plus a 5-year extension option for any qualified child or children of the lessee or lessees;
2. Fixed rents for the full term of the rental interest based upon:
 - a. The balance of the term of the original lease,
 - b. The level of credit by the lessor for the benefit of the lessee for early surrender of the lessee's leasehold interest,
 - c. The balance of any leasehold mortgage and monthly debt service,
 - d. The existence of any leasehold mortgage insurance, and
 - e. A fair return to the lessor;
3. Restrictions on any assignment by way of transfer or mortgage, except to any qualified child or children of the lessee or lessees for the balance of the term; and
4. The lessee's first right of refusal to rent in the event the lessor decides to continue the condominium, cooperative or planned development project in



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some rental or leasehold construct beyond the expiration of the original leases to the project, provided that the lessee is not in arrears on the lessee's lease rent and not in default under the lease;

and

BE IT FURTHER RESOLVED that the Council believes that federal, state and county governmental agencies should seriously explore viable means of providing subsidies, including Section 8 rental vouchers or increased real property tax exemptions, for qualified lessees within the Gap Group who need rental assistance to afford the difference between (a) rents that provide a fair return to the lessor and (b) what the lessee can reasonably afford in proportion to the median income of the lessee; and

BE IT FURTHER RESOLVED that the Council urges lessors to provide 5-year advance notice to lessees of the lessor's plans either (a) to renew, or not renew, the leases prior to the expiration of the leases; or (b) to institute new leasehold or rental terms and conditions conducive to the then-existing market conditions; and

BE IT FURTHER RESOLVED that lessors and lessees within the Gap Group are encouraged to engage in dialogue and mediation if necessary in seeking viable alternative rental housing solutions consistent with the context, tenets and guidelines provided herein; and

BE IT FURTHER RESOLVED that the Council urges the Administration of the City and County of Honolulu to establish a unit or designate staff within the Office of Economic Development to assist and facilitate lessors and lessees in carrying out the provisions of this Resolution, including but not limited to such activities as lobbying Congress to enact favorable capital gains benefits for lessors who sell to lessees; and



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 04-338, CD1

RESOLUTION

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the managing director, the director of the department of community services and the members of the leasehold conversion task group.

INTRODUCED BY:

Ann Kobayashi

DATE OF INTRODUCTION:

November 10, 2004

Honolulu, Hawaii

Councilmembers